Supreme Court, U. S.
FILED
SEP 3 1976
MICHAEL RODAK, JR., CLERK

No. 75-1860

In the Supreme Court of the United States

OCTOBER TERM, 1976

ELIJAH EPHRAIM JHIRAD, PETITIONER

v.

THOMAS E. FERRANDINA, UNITED STATES MARSHAL, SOUTHERN DISTRICT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The Government of India, the real party in interest to this case, seeks the extradition of petitioner pursuant to 18 U.S.C. 3182 and 3184. India contends that petitioner, while Judge Advocate General of the Indian Navy, embezzled money from a prize fund set up to compensate naval veterans.

In 1966, petitioner left India to attend the World Jewish Conference in Belgium. Petitioner elected not to return to India and, instead, lived in Switzerland and Israel before coming to the United States in June 1971. Thereafter, the Government of India asked that petitioner be extradited in connection with the embezzlement charges. After a hearing before a magistrate petitioner was found extraditable (Pet. App. D), and the United States District Court for the Southern District of

New York denied petitioner's habeas corpus petition (Pet. App. E). The court of appeals reversed, however, and remanded the case for a determination whether petitioner fled from India with intent to avoid prosecution (Pet. App. F). Upon remand, the case was referred to the magistrate, who found that petitioner's decision not to return to India was prompted by an intent to avoid prosecution and, hence, that petitioner was subject to extradition (Pet. App. H). The district court denied petitioner's subsequent petition for a writ of habeas corpus (Pet. App. I), and the court of appeals affirmed (Pet. App. J). Extradition was stayed pending the instant petition for a writ of certiorari (Pet. App. M).

The Extradition Treaty of December 22, 1931, 47 Stat. 2122, (Pet. App. A), under which the Government of India has sought petitioner's extradition, does not provide that the United States shall represent the extraditing country. The Government of India, therefore, has been represented throughout this litigation by privately-retained counsel. The United States did participate in the proceedings below, but solely to defend the applicability of the 1931 Treaty. That question is not raised in the petition for certiorari.

Since the interested parties have been and are represented by private counsel, and since the United States has not addressed the issues raised by the petition for certiorari, the United States neither supports nor opposes the petition for certiorari.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1976.

DOJ-1976-09